Book Reviews

THE LAW OF ARREST IN CIVIL AND CRIMINAL ACTIONS. By Harvey C. Voorhees. Second edition. Little, Brown & Co., 34 Beacon St., Boston. 1915. pp. xliii, 287. $3.00 net.

In early England where most of the people were in frankpledge, each tithing being responsible for the production of its members, where the township was required to follow the hue and cry and pursue a cattle thief to its boundaries, the people, under penalty, enforced their own law, and there was no special body of police to do the work. Watchmen, like the Dogberrys of later time, scarcely require any qualification of this statement. It was not until the nineteenth century that an adequate police system was organized in England. The law today bears many traces of its popular origin in the large power of arrest given to private persons, and in the limitations on the police, whose power is but slightly greater than that of a private person, in striking contrast to continental police systems. (Fosdick, European Police Systems.) The right of a private person to make an arrest, however, is not so important. He does not have to do so unless called upon by an officer, for the law of misprision of felony as laid down by the author (p. 131), is probably obsolete in most jurisdictions. But the policeman's lot is not a happy one. He must decide at a moment's notice whether he has a right to make an arrest, and whether he can take life if necessary, questions which in particular cases the Supreme Court determines by a bare majority after elaborate argument. In Weber v. Doust (Wash)., 146 Pac. 623, 143 Pac. 148, the court affirmed a judgment of twelve hundred fifty dollars against a chief of police who detained a girl in the juvenile detention rooms for two days. On rehearing the decision was reversed by a majority of the court on the theory that under the Juvenile Delinquent Act, where an officer proceeds in good faith a false imprisonment does not result as a matter of law. The policeman had a narrow escape. The powers of detention under juvenile court statutes are hardly within the purview of the treatise. One could not expect a small book to contain local statutes. These often, however, modify the common law in important respects. For instance, the California Penal Code does not permit an officer, without a warrant, to make an arrest in the daytime on reasonable grounds of belief that a felony has been committed, where in fact no felony has been committed. The value to an officer of a monograph like this on the common law is apparent. With brief qualifications, which would suggest themselves in any particular jurisdiction, the work would become

entirely safe as the *vade mecum,* which the author says it has become to police departments since the first edition was published.

Too late for mention in this second edition, the United States Supreme Court has decided that evidence illegally obtained can in some cases be excluded where a motion for that purpose has been made before trial, thus qualifying the author's statement (p. 26). Weeks v. United States, 232 U. S. 383. The author can hardly be expected to have anticipated this decision. On page 117 it is stated that a member of the state militia, while in active service, has the same power as a peace officer of the state. This is rather conservative. Hatfield v. Graham (W. Va.), 81 S. E. 533; Ex parte McDonald (Mont.), 143 Pac. 947; Re Moyer, 35 Colo. 159; Commonwealth v. Shortall, 206 Pa. St. 165, allow considerably more power. The statement on page 158, that an officer whose duty it is to make an arrest may use all force that is necessary in making the arrest, even to the point of taking life, when there is no other way of making the arrest, is certainly not law, and is inconsistent with the rule laid down on page 162, which goes to the other extreme, in holding that even in case of murder the pursuing party has no right to kill one peaceably avoiding arrest. There is a very apparent inconsistency in the law as laid down on page 88, and on page 91. On the former page it is stated that an officer may arrest for felony upon reasonable grounds of suspicion, and if his suspicions vanish may discharge the prisoner without bringing him before a magistrate. On page 91 it is laid down that where the statute provides that the person arrested be brought before a magistrate, the officer is liable for false arrest if he discharges the prisoner without bringing him before a magistrate. The case of Keefe v. Hart, 213 Mass. 476, cited to sustain this latter opinion, does not appear to be based on any statute, but expressly refuses to follow the cases relied upon by the author on page 88 in support of the officer's right to release. On page 101, People v. Lillard, 18 Cal. App. 343, is no authority for the proposition that a private person joining a hue and cry may shoot the pursued person to prevent his escape. In that case the decedent had actually attempted a felony and the court held that the cries of the pursuers gave defendant reasonable cause to believe that the felony had been committed. It does not follow that the defendant would have been justified if no felony in fact had existed. On page 175 it is stated that the right to search does not give the right to make a compulsory physical examination for the purpose of obtaining evidence. This is not conceded by all decisions. For identification purposes at least, some courts recognize the right to take photographs, finger prints and measurements. 23 L. R. A. (N. S.) 739.

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